

### The §102 Rejections

The Examiner has rejected claims 1-37 as being anticipated under 35 U.S.C. §§102(a), 102(e)(2) and 102(f) by Pandian, et al., '457 patent. Applicant (in particular, Applicant Cole) traverses this rejection.

Applicant Cole filed this patent application, in the first instance, to resolve any issues related to his strong belief that he is an inventor of claimed subject matter of the present application, and likewise, claimed subject matter of the '457 patent. Having failed to be named an inventor of the '457 patent, Dr. Cole has resolved to attempt to address this issue by filing the present application.

The Examiner has rejected the instant application as being anticipated by Pandian, et al, under 35 U.S.C. §§102(a), 102(e)(2) and 102(f). Inasmuch as Dr. Cole believes that he is an inventor of subject matter of the cited art, the '457 patent, none of these rejections should stand. Thus, the '457 patent, pursuant to Dr. Cole's being an inventor of subject matter of that patent, is not prior art to the instant application. Note that the two inventors of the '457 patent, Drs. Pandian and Lu, are also named as inventors in the present application.

It is respectfully requested that the Examiner's rejection of the instant application under 35 U.S.C. §§102(a), 102(e)(2) and 102(f) should be withdrawn for the reasons which are set forth hereinabove.

### The §101 Rejection

The Examiner has rejected claims 1-37 of the instant application as claiming the same invention as that of claims 1-37 of prior U.S. patent no. 6,627,457. In fact, as indicated above, the principal reason for filing the present application is to address Dr. Cole's claims that he is an inventor of subject matter of the '457 patent. Presently, he

has not been named an inventor of the '457 patent. The claims of the instant application and the '457 patent are identical, although the inventive entities in each application are different. Applicant's view is that double patenting does not/should not apply to the instant application, and that the most administratively efficient means for disposing of this inventorship issue is through a proceeding in the patent office. Applicant respectfully requests the Examiner to withdraw this rejection of the instant application over the issued '457 patent so that this issue may be resolved by the patent office.

For the above the reasons which are set forth hereinabove, Applicant respectfully submits that the application is in condition for allowance and early action resulting in allowance of the instant application is earnestly solicited. Should the Examiner wish to discuss this amendment in an effort to expedite allowance/resolution of issues related to same, the undersigned attorney may be reached at the telephone number which appears below.

Applicants have neither canceled nor added any claim. No fee is due for the presentation of this amendment. A petition for a three month extension of time is enclosed as is the fee of \$1020. An information disclosure statement is enclosed as is the fee of \$180 for consideration of an information disclosure statement after a first office action.

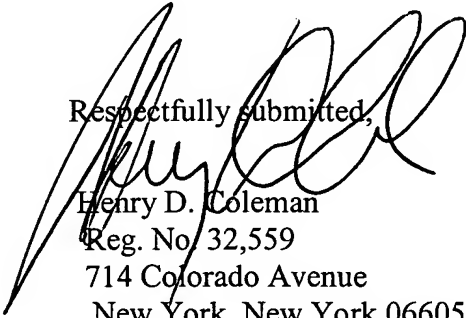
Note that nothing which is stated in the information disclosure statement and the enclosed letter of Counsel (adverse to Cole's interests) or the enclosed declaration of Murugan R. Pandian (adverse to Cole's position) is to be taken as an admission by Dr. Laurence Cole as to his relationship as an inventor of one or more claims in the instant application. Large entity status applies to the present application.

Please charge any additional fee due or credit any overpayment previously made to Deposit Account No. 04-0838. A change of correspondence address is enclosed. Please note that all communications involving this application should be sent to

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Dated: September 19, 2005

Respectfully submitted,



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**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450 Alexandria, Virginia 22313-1450 on September 19, 2005.



Henry D. Coleman, Reg. No. 32,559